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THE LEAGUE OF NATIONS AND PREVENTION OF WAR

by

MILDRED S. WERTHEIMER

with the aid of the Research Staff of the Foreign Policy Association

1 1 1

INTRODUCTION

FOR more than a quarter of a century, ever since the timid efforts of the first Hague Conference of 1899, every attempt to organize relations between nations has been directed toward the elimination of war as a means of settling international disputes. Since the end of the World War, which revealed the penalties of international anarchy and the system of armed peace, there has been built up an impressive framework of international agreements, covenants and treaties prescribing resort to force and supplying pacific machinery for use in times of crisis. Out of the war itself came the League of Nations with its extensive system for peaceful settlement, and the World Court with its tribunal for adjudicating legal controversies. And from the post-war peace movement there has come the no less impressive network of arbitration treaties, under which virtually every civilized country in the world has voluntarily limited its freedom to settle by force disputes with one or more of its neighbors. Superimposed upon this structure there is the Kellogg pact, binding 58 States to seek only pacific means for the settlement of all controversies between them.¹ And yet today, in spite of these solemn treaties, candid observers of the international scene are still reporting a curious lack of confidence in the security afforded by the new structure which has been created. They point to the maintenance of huge military establishments, the snail-like pace of the disarmament movement and

the continued evidence of suspicion, and they ask whether the system of the League and the pact can actually be relied on in time of grave crisis.

A few weeks ago a distinguished British publicist, Mr. H. Wickham Steed, writing to the *London Times*, expressed the greatest concern over the "strained relations" between France and Italy and suggested that should further complications arise some member of the League not directly interested should be prepared to call the matter to the attention of the Council.² Since Mr. Steed's letter was published, the tension between the two great Mediterranean powers has been perceptibly relieved by the readiness of both to suspend naval construction during the next six months in order to permit renewal of negotiations on all points at issue, and it is hoped that this move will dispel the prevailing nervousness in Europe.

While the wisdom of its application in the present case may be questioned, Mr. Steed's proposal touches more than one issue of fundamental importance to the League of Nations. In the first place, Mr. Steed recognizes the difficulty of inducing a member of the League to take the initiative in bringing a situation to the attention of the Council. Broadly speaking, the League cannot take any action or even take cognizance of a dispute until it is called officially to the attention of the Council by a member State.³ If no one "pushes the button" to start the League machinery, the whole system pro-

1. On the initiative of the British government at the Tenth Assembly in September 1929, the question of amending the Covenant in order to bring it into harmony with the Kellogg pact was studied by a Committee of Jurists which met in Geneva from February 25 to March 5, 1930. Cf. League of Nations, A.B.1930.V., *Report of the Committee*. This question will be discussed in a forthcoming number of the *Information Service*.

2. *The Times* (London), June 30, 1930.

3. The Council as a whole has twice started action on its own initiative, notably in the Panama-Costa Rica dispute (1921) and in the Bolivia-Paraguay dispute (1928). In both instances hostilities broke out while a meeting of the Council was in progress.

vided by the Covenant stands idle, even though hostilities may have broken out. Mr. Steed declared that Great Britain was "too deeply interested in Mediterranean affairs to escape suspicion if she were to take the lead in setting the League machinery in motion" in any dispute involving France and Italy, and he urged some of the smaller powers, such as Holland or the Scandinavian countries, to be prepared to act on a moment's notice. The smaller powers, however, as the Geneva correspondent of the *New York Times* recently pointed out, have never been anxious to intervene in a dispute between their powerful neighbors by "pushing the button," if by this act they are likely to injure themselves.⁴ This state of affairs, the correspondent added, is coming to be considered one of the weaknesses of the League.

In the second place, Mr. Steed pointed particularly to Article XI of the League Covenant as the provision especially applicable before actual hostilities have broken out. This is the article which declares that any war or threat of war is a matter of concern to the whole League, and which gives the Council the fullest power "to take any action which may be deemed wise and effectual to safeguard the peace of nations." It is only necessary that some member bring a question affecting the peace to the Council's attention.

As the following report brings out, it is this provision of the Covenant which embodies one of the three cardinal ideas on which the League of Nations was built and on which it rests today. These three fundamentals characterized all of the draft plans for an international League developed during the final years of the war by President Wilson, General Smuts and Lord Phillimore. The first was the principle of periodic conferences of the nations of the world. The second was the principle of peaceful settlement of international disputes, whether by arbitration or conciliation or inquiry and report, by disinterested and impartial agencies. The third was the principle of enforcing the peace by the collective action of all States against one which went to war in vio-

lation of its pledge to arbitrate or permit investigation.

The history of the League during the past eleven years reveals a changing emphasis on the last two of these fundamental ideas. At the Paris Peace Conference the strongest battle was fought over the idea of sanctions. France, supported by some other States, was not satisfied with what is now Article XVI,^{4a} but proposed a veritable league to enforce peace with an international army—"a force so superior to that of all nations or all alliances that no nation or combination of nations can challenge or resist it." In opposition to this idea President Wilson declared that "if we organize from now onwards an international army, it would appear that we were substituting international militarism for national militarism." The group of States led by France, dissatisfied with the sanctions provisions written into the Covenant, has continued to emphasize this fundamental to the exclusion of the others.

The pages which follow, however, will bring out the increasing attention which members of the League have given to the second basic idea; that of peaceful settlement, and in particular to the provisions of Article XI. It will be seen that this article, which has been cited by Mr. Steed as applicable in a situation like that between France and Italy, has already been invoked on a number of occasions, that it has been the subject of serious study by League committees and by the Council and Assembly, and that, in a sense, it has been recently "rediscovered" by members of the League.

How much reliance may be placed on the provisions of Article XI is a question of opinion which cannot be answered in a report of this character. On the one hand it will be noted that definite suggestions have been adopted to guide the Council in determining its course of action. On the other hand, in all of the discussions which have taken place at Geneva it has been assumed that some member will call the dispute to the attention of the League—an assumption which Mr. Steed's letter shows is not entirely warranted.

4. *New York Times*, July 2, 1930.

4a. For text of Articles X to XVII of the Covenant of the League of Nations, cf. Appendix I, p. 221-2.

LEAGUE MACHINERY FOR PEACEFUL SETTLEMENT

The machinery of the League providing for peaceful settlement is sufficiently well known to require only the briefest summary here. Not only is any war or threat of war declared by the Covenant to be a matter of concern to the whole League, upon which the Council (or Assembly) may take action, but it is the friendly right of each member to call the attention of these bodies to any circumstance which threatens to disturb the peace (Article XI). If a dispute arises between two members of the League which threatens to lead to a rupture between them, they have agreed (Article XII) to submit the matter to arbitration, to judicial settlement, or to inquiry by the Council. Furthermore, they have agreed not to resort to war until three months after the publication of the report which the Council is obliged to make on the matter. Since the Council must make its report within six months, a possible delay of nine months is envisaged as a "cooling-off" period. If a dispute is submitted to arbitration or to judicial settlement, the members have agreed that they will accept the award or decision in good faith and have promised not to go to war with any member which has complied therewith (Article XIII). Machinery for judicial settlement is provided by the Permanent Court of International Justice at The Hague (in accordance with Article XIV of the Covenant).

Finally, under Article XV, the Council is given full authority to mediate a dispute which is not submitted to arbitration or to judicial settlement.⁵ If the Council is able to make a report on the settlement of the case which is accepted unanimously by its members except for the parties to the dispute, the members of the League have agreed that they will not go to war with any party (to the dispute) which complies with the

Council's recommendations. If, however, the Council fails to reach a unanimous report (not counting the votes of the parties to the dispute), the members of the League recover their freedom of action, albeit they are estopped from going to war before a period of three months has elapsed. This provision is generally known as the "gap in the Covenant."

POSSIBLE ACTION BY THE COUNCIL

When a dispute is referred to the Council for investigation, that body has four alternative courses of action: (1) it may settle the dispute itself by making recommendations to the parties; (2) if the dispute involves legal questions, it may submit the whole matter or a component part of it to the Permanent Court of International Justice for an advisory opinion;⁶ (3) it may refer the dispute to commissions of conciliation; (4) it may refer it to the Assembly. Furthermore, if a member of the League becomes involved in a dispute with a non-member, the latter may be invited to accept the obligations of membership for the purpose of settling the dispute (Article XVII). The peaceful settlement procedure, which applies to members of the League as outlined above, then becomes applicable. If the non-member refuses to accept these obligations and resorts to war against a member of the League, the sanctions of Article XVI, which are designed to enforce the peace of the world, become operative against the non-member State.

Specifically, the sanctions are to come into force against a member State which resorts to war "in violation of its covenants under Articles XII, XIII or XV [of the League Covenant]." Such violation constitutes an act of war against all the other members of the League, who are bound to institute an economic boycott against the aggressor. The Council has the duty then "to recommend to

5. Cf. speech made by Sir Douglas Hogg, Attorney-General of Britain, before the Permanent Court of International Justice, January 9, 1922, in the Tunis-Morocco case (Advisory Opinion No. 4 of the Permanent Court), in which he says: "Article XV . . . sweeps in all disputes which have not been covered by the earlier Article XIII. . . . Paragraph 8 [Article XV, domestic questions] is certainly not intended to reopen the old question regarding vital interests. . . ." Publications of the Permanent Court of International Justice, Series C, *Acts and Documents relating to Judgments and Advisory Opinions given by the Court*, No. 2, Special (Extraordinary) Session, January 8-February 7, 1923, Documents relating to Advisory Opinion, No. 4, A. W. Sythoff's Publishing Co., Leyden, p. 26; for full text of Sir Douglas Hogg's speech, cf. p. 17-51. Cf. also A. P. Fachiri, *The Permanent Court of International Justice*, London, Oxford University Press, 1925, p. 150 et seq.

6. Forty-one States have signed the so-called Optional Clause of the Statute of the Permanent Court of International Justice. Twenty-nine States have ratified their signatures, including France, Great Britain and Germany. Italy has signed and ratification is pending in the Italian Senate. Cf. V. M. Dean, "The Permanent Court of International Justice," *F. P. A. Information Service*, Vol. V, No. 21, December 25, 1929.

the several governments what military, naval or air forces the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League." Thus joint action against the aggressor is envisaged.

THE STRUGGLE OVER SANCTIONS

The prolonged discussion which preceded the drafting of Article XVI at the Peace Conference was followed by an even more protracted discussion at Geneva. In 1921, despite the objections of France, the Second Assembly passed a series of interpretative resolutions which it recommended for the guidance of the League in applying Article XVI until amendments to the Covenant, which were formulated at the same time and to the same end, should come into force. The amendments have never been ratified, nor does there seem any prospect of their ratification. The resolutions, which have no binding effect except as a guide, nevertheless stress the fact that it is the "duty of each Member of the League to decide for itself whether a breach of the Covenant has been committed." Moreover, at Locarno in October 1925 the representatives of Belgium, Czechoslovakia, France, Great Britain, Italy and Poland, in a draft collective note to Germany, summarized the views of the principal European powers in regard to Article XVI to mean that "each State member of the League is bound to cooperate loyally and effectively in support of the Covenant and in resistance to an act of aggression to an extent which is compatible with its military situation and takes its geographical position into account."⁷

Some members of the League felt strongly that the security promised by the Covenant to members had been seriously weakened by these interpretative resolutions of Article XVI. Others, who either hesitated to accept the fullest obligation to use force or who feared the consequences of invoking military pressure, emphasized disarmament rather than sanctions as the best means of realizing security.

In general, the chief advocates of sanctions have been those States primarily concerned with preserving the *status quo* as established by the peace treaties; notably, France and its allies, the Little Entente States (Czechoslovakia, Rumania and Jugoslavia), and Poland. These States declare that they cannot reduce their armaments without first being assured the protection of joint action by the other League members against an aggressor. The non-sanction school, on the other hand, under the leadership of Great Britain, is either loath to undertake further commitments which might involve the use of military or naval forces or is averse to perpetuating the *status quo*. In the latter category are Germany, Hungary, Austria and Bulgaria, the States defeated in the war, at whose expense for the most part the new States were created. Italy has ranged itself on the side of the non-sanction advocates and those who favor a revision of the peace treaties. Furthermore, the fact that the ex-enemy States have been disarmed by the peace treaties, presumably "in order to render possible the initiation of a general limitation of the armaments of all nations,"⁸ leads them to stress the obligation to disarm on the part of the former Allied powers, rather than the security side of the problem.

"DISARMAMENT AND SECURITY" DEADLOCK

All discussions of political issues at Geneva and elsewhere, particularly during the years prior to 1926, were dominated by the French view of security as "synonymous with sanctions."⁹ This was especially marked in the League's disarmament work. In 1922 the Third Assembly passed the famous Resolution XIV which recognized the interrelation of disarmament and security. In 1923 this principle formed the basis of the Draft Treaty of Mutual Guarantee which was designed to make possible general disarmament by strengthening sanctions and making more water-tight the obligation to give aid to a State victim of aggression. This Draft

8. Part V, Treaty of Versailles; Part V, Treaty of Trianon; Part V, Treaty of St. Germain; and Part IV, Treaty of Neuilly.

9. Cf. League of Nations, C.165.M.50.1923.IX.C.P.D.1(e), *Minutes of the Second Session of the Committee on Arbitration and Security*, speech of Dr. W. A. Riddell, delegate of Canada, p. 30.

7. For full text of the note, cf. *Final Protocol of the Locarno Conference, 1925, with Annexes*, London, H. M. Stationery Office, 1925, Cmd. 2525, p. 56-57.

Treaty was not accepted and in 1924 the Geneva Protocol was formulated, in which arbitration was added to disarmament and security to form the famous trilogy which underlies so much of the subsequent work of the League. The Protocol failed of acceptance due to the opposition of Great Britain, and the next step was the appointment, in 1925, of the Preparatory Commission for the Disarmament Conference whose task it has been to prepare the way for a general disarmament conference which will put into effect the principles of Article VIII of the League Covenant—"... the reduction of national armaments to the lowest point consistent with national safety and the enforcement of international obligations." The Preparatory Commission met for the first time in April 1926 and has done a great amount of technical work on the disarmament problem. Due to grave and fundamental differences of opinion, for the most part centering on the achievement and organization of security, the work of the Preparatory Commission had apparently reached a stalemate as early as 1927.¹⁰

THE NEW EMPHASIS ON ARTICLE XI

It was during these discussions that the attention of the League was focused on methods of preventing war, including arbitration and possible procedure under Article XI.¹⁵ This article¹⁶ forms the cornerstone of the League's machinery for preventing hostilities. It is regarded, especially by the so-called non-sanction school, as the keystone of the arch.¹⁷

Article XI does not provide the actual means for the settlement of disputes, but is essentially a preamble to the following articles which furnish the actual machinery for peaceful settlement. The value of Article XI lies in the broadness of its scope. Not only is war itself declared to be of concern to the members of the League, but also the threat of war, whether it immediately affects

All of these factors, together with the continued unwillingness of Great Britain to commit itself to guarantees beyond those implied in the Covenant and the Locarno treaties, contributed to a fresh approach from another angle. The Eighth Assembly in 1927, at the suggestion of the French, German and Dutch delegations, passed a resolution designed to give to the Preparatory Commission "the new impulse which it required."¹¹ This resolution, voted by the plenary Assembly on September 26, 1927, requested among other things that the League Council instruct the Preparatory Commission to appoint a committee "to consider... the measures capable of giving all the States the guarantees of arbitration and security necessary to enable them to fix the level of their armaments at the lowest possible figures in an international disarmament agreement."¹² As a result, on September 27, 1927, the Council took the necessary action,¹³ and the Committee on Arbitration and Security was appointed by the Preparatory Commission on November 30, 1927.¹⁴ This committee has held four sessions.

any members of the League or not. Furthermore, any circumstance which merely threatens to disturb the good understanding of nations upon which peace depends comes within the purview of the Council (or Assembly) under this article. Any single member of the League, whether a party to the dispute or not, may request an emergency meeting of the Council to deal with a matter which threatens or has caused hostilities, and it is declared to be the "friendly right" of any member to bring these questions before the Council (or Assembly). It is under this article alone that a League member, not a party to the dispute in question, is given the right to submit the controversy to the Council or Assembly.

10. W. T. Stone, "The London Naval Conference," *F. P. A. Information Service*, Vol. VI, No. 6, May 28, 1930; "Disarmament and the Five Naval Powers," *ibid.*, Vol. III, No. 2, March 30, 1927; "The Disarmament Deadlock," *ibid.*, Vol. VI, No. 19, November 23, 1928.

11. League of Nations, *Official Journal*, Special Supp. No. 57, 1927 (8th Ordinary Assembly, Minutes of the Third Committee), p. 37.

12. *Ibid.*, Special Supp. No. 54, 1927 (8th Ordinary Assembly, Plenary Meetings), p. 178.

13. League of Nations, *Official Journal*, 8th Year, No. 10, October 1927 (Minutes of the 47th Session of the Council), p. 1446.

14. League of Nations, C.667.M.225.1927.IX.C.P.D.1(d), *Minutes of the Fourth Session of the Preparatory Commission for the Disarmament Conference and the First Session of the Committee on Arbitration and Security*, p. 20.

15. The development of arbitration, conciliation, etc., will be reviewed in a forthcoming number of the *Information Service*.

16. For text, cf. Appendix I, p. 221.

17. League of Nations, C.165.M.50.1928.IX., p. 95.

UNANIMITY RULE UNDER ARTICLE XI

There has been some question as to whether the action of the Council under Article XI must be taken by a unanimous vote, counting the parties to the dispute, or whether it may proceed by unanimous vote, *not* counting the votes of the parties. If a party to a dispute may vote, it could of course block the action of the Council under this article.¹⁸ Early commentators assumed that the Council's action under Article XI must be unanimous including the parties to the dispute.¹⁹ At the Fifth Assembly, in 1924, it was stated that Article XI "confers no right on the Council or on the Assembly to impose any solution of a dispute without the consent of the parties."²⁰

Within more recent years, however, as the value of Article XI has become more apparent to members of the League, there appears to be a tendency to accept as a matter of course the principle that a decision to intervene under Article XI would be taken by a unanimous vote, exclusive of the disputants.²¹ This has been particularly evident in the discussions in the Committee on Arbitration and Security in regard to Article XI. Thus in submitting questions in regard to a German proposal empowering the Council to impose an armistice after hostilities have broken out, the members of the Committee seemed to assume as a matter of course that the votes of the disputants would not be counted in voting such a measure. Indeed the question submitted by the *rapporteur* on that question, M. Rolin-Jaquemyns, was worded as follows: "Should the Council resolutions concerning the questions mentioned in the above suggestion [to impose an armistice] be adopted unanimously (not counting of course the votes of the representatives of the parties to the dispute), or would a majority vote, simple or qualified be admissible, at all events in certain cases

...?"²² The doubtful point at issue was whether the Council could act by unanimous vote or by majority vote, always excluding the votes of the disputants. It was decided by the committee that the vote must be unanimous, exclusive of the parties to the dispute. The discussion seemed to show that the committee had no thought, however, of including the votes of the disputants in reckoning unanimity.

In spite of this opinion, however, it is pointed out that unanimity is still required according to the letter of the Covenant. If a major power, party to a dispute, were to insist upon voting, it might block the Council's action. In cases involving small powers, the moral weight of the Council is very great, as in the past the influence of the great powers in settling such disputes has been potent.

APPLICATION MADE OF ARTICLE XI

One of the primary reasons for the "rediscovery" of Article XI by the members of the League is that it has been applied successfully in the settlement of many disputes which the League has been called upon to effect. In some 24 disputes handled by the Council during the first decade of the League's existence, no less than 18 were submitted under Article XI.²³ Thus a mass of useful procedure in the application of Article XI has been accumulated. On the other hand, Article XVI, although it has been the subject of a great deal of discussion and controversy, has never as yet been applied.²⁴

The League has not as yet, however, been asked to settle a major question between great powers. One of the delegates to the Arbitration and Security Committee put this bluntly in discussing the amount of security offered by the League Covenant: "Its value will have to be proved in cases of serious crises, in which the interests of great powers are involved, in order that the peoples of the world may feel an absolute confidence in the unfailing action of the Council."²⁵

18. Cf. Article V of the Covenant.

19. Schücking and Wehberg, *Die Satzung des Völkerbundes*, Berlin, Vahlen Verlag, 1924 ed., p. 469; Dr. M. Gonsiorowski, *Société des Nations et Problème de la Paix*, 2 vols., Paris, Rousseau & Cie, 1927, Vol. II, p. 329-330.

20. League of Nations, *Official Journal*, Fifth Assembly, 1924, Special Supp. No. 24, Minutes of the First Committee, statement of Sir Cecil Hurst of Great Britain, p. 88.

21. Cf. T. P. Conwell-Evans, *The League Council in Action*, London, Oxford University Press, 1929, p. 56.

22. League of Nations, C.358.M.112.1928.IX., *Minutes of the Third Session of the Committee on Arbitration and Security*, p. 38, 39.

23. In many instances other articles of the Covenant were also invoked.

24. For table giving the disputes which have been handled by the Council and the Covenant articles invoked, cf. Appendix II, p. 223-4.

25. League of Nations, C.165.M.50.1928.IX., speech of delegate of Yugoslavia, p. 44.

THE SUBMISSION OF A DISPUTE

Many of the questions which the Council has settled were frontier disputes arising directly out of the war and the peace settlements. Smaller powers have not hesitated to apply to the League, especially when they have felt their security to be menaced. Although Article XI declares that it is the "friendly right" of any member of the League to bring a dispute to the Council, this right has been exercised only twice by a member not a party to the dispute. In the Aaland Islands question between Finland and Sweden, it was Great Britain which referred it to the League. In a dispute between Albania and Yugoslavia in 1921 over the delimitation of the Albanian frontiers, again it was the British government which called the matter to the attention of the Council, under Article XI of the Covenant. In this case, however, Albania had appealed to the League earlier, alleging that Yugoslavia had violated the Covenant.²⁶ The Allied Supreme Council and the Allied Council of Ambassadors referred several questions which they had been unable to solve to the League Council under Article XI—notably a boundary dispute between Czechoslovakia and Poland, a dispute of the same nature between Albania and Yugoslavia, and the question of the status of Memel. The delimitation of the Upper Silesian boundary which concerned Germany and Poland, one of the thorniest problems handled by the Council, was referred to the latter body by the Allied Supreme Council.

All the other disputes dealt with under Article XI—there are some thirteen of them—appear to have been referred to the Council directly by one of the parties. In both instances when a third power exercised its "friendly right," the disputes did not directly concern one of the so-called great powers.

In addition to the question of who shall submit a dispute, there remains the problem of the proper time to effect such submission if a third power does decide to intervene. Diplomatic negotiations are frequently delicate and there is the danger that outside in-

terference may upset them. Franco-Italian negotiations which had started in March 1928 and which were suspended on the eve of the London Naval Conference have been cited as an important case in point. The danger involved in premature action is greater in the case of major powers; on the other hand, the danger of delay may be equally large. The discussions in Geneva have recognized this. In the study of the application of Article XI it was explicitly stated that the Council "must not interfere in disputes without a serious reason, or as long as there is still some hope of an amicable settlement."²⁷

THE GRECO- BULGARIAN DISPUTE

Probably the most important case which has come before the Council under Article XI is the Greco-Bulgarian dispute of October 1925. In order to give a picture of the actual working of the Council in time of crisis, it may be useful to describe briefly the Council's action in that case as an example of the practical application of Article XI.

The Greco-Bulgarian conflict arose from frontier incidents in October 1925. Early in the morning of October 23, a telegraphic appeal to the League from the Bulgarian government was received by the Secretary-General in Geneva. Articles X and XI of the Covenant were invoked. The Secretary-General at once communicated with the Acting President of the Council, M. Briand, in Paris. The latter sent a telegram to both the Greek and Bulgarian governments as follows:

"The Secretary-General, acting under Article XI, has convoked special meeting of Council on Monday next in Paris. The Council at that meeting will examine whole question with representatives Bulgarian and Greek Governments. Meantime, I know my colleagues would wish me to remind the two Governments of solemn obligations undertaken by them as Members of the League of Nations under Article XII of Covenant not to resort to war and of grave consequences which Covenant lays down for breaches thereof. I therefore exhort the two Governments to give immediate instructions that, pending consideration dispute by Council not only no further military movements shall be undertaken but that troops shall at once retire behind their respective frontiers. Briand."²⁸

27. League of Nations, C.A.S.10., p. 29.

28. League of Nations, *Official Journal*, 6th Year, No. 11 (Part II), November 1925. *Minutes of the Thirty-sixth (Extraordinary) Session of the Council*, p. 1696 et seq.

26. Cf. League of Nations, *Minutes of the Fifteenth Session of the Council*, November 16-19, 1921, p. 3 et seq.

The Secretary-General had in the meantime summoned an extraordinary meeting of the Council for Monday, October 26, in Paris.

As a British commentator has pointed out, the phrasing of M. Briand's telegram is significant.²⁹ It addresses both disputants in the same words, thus avoiding the necessity of determining in the early stages of the dispute which party was actually guilty. It was the League's first task to separate the contestants and prevent war. "The value of this procedure cannot be too highly estimated. This method places upon the President of the Council the single task of separating the combatants, without involving himself in other issues. For instance he avoids at this stage having to deal with the difficult question of the aggressor. . . ." Moreover, the language of the telegram is peremptory. The Acting President of the Council "exhorts" both disputants to refrain from further military movements and further says that troops shall retire behind their respective frontiers. By reminding both governments of their obligations as members of the League and warning them of the "grave consequences" of violating the Covenant, what has been called a "peremptory request" was made even stronger. The whole weight of the Council was thrown into the task of separating the combatants.

THE COUNCIL EFFECTS THE "CEASE-FIRE"

The Council's first task when it met was to insure the cessation of hostilities and immediate withdrawal of troops. The parties were given twenty-four hours in which to inform the Council that unconditional orders had been issued to the troops to withdraw behind their respective frontiers and sixty hours within which to inform the Council that evacuation had been completed. Furthermore, at the request of the Council the French, British and Italian governments directed their respective military attachés at Belgrade to go at once to the scene of conflict and report directly to the Council on the execution of its decision. On October 28 the Council was informed that the orders had been given and on October 29 that the evacuation had been completed.

The Council having effected the cessation of hostilities, turned its attention to establishing the facts in the case and the responsibilities. A commission of inquiry under the presidency of Sir Horace Rumbold, then British Ambassador at Madrid, was appointed, composed of a French and an Italian military officer, a Swedish and a Dutch civilian. Both civilians had had legal experience. The commission was charged with making a thorough inquiry and with offering suggestions as to the means by which the recurrence of such events might be avoided.

The commission proceeded almost immediately to the late scene of action and was able to present its report to the Council at the latter's regular session in December 1925. The report was accepted with a few slight modifications, and an indemnity fixed which the Greek government was to pay to Bulgaria. In making suggestions regarding steps that should be taken to avoid future incidents of this kind, the report recommended that "it might be considered whether special facilities for communications and transit could not be granted to Governments and to the Secretariat of the League in case of a threat of war—in particular, the use of wireless and priority messages." The Council adopted the suggestion that this recommendation be referred to the League's Advisory and Technical Committee for Communications and Transit with the request that it examine the matter and submit a report to the Council.³⁰

Thus, in this case the Council was successful in its two tasks of separating the combatants, effecting the so-called "cease-fire," and in later settling the dispute between them. The Council's broad powers under Article XI enabled it to act immediately without waiting to establish facts or prove charges which it would have been forced to do had the question been one of applying the sanctions of Article XVI. Furthermore by addressing both disputants on terms of equality, there was no need to determine which was the "aggressor."³¹

30. League of Nations, *Official Journal*, 7th Year, No. 2, February 1926, Minutes of the Thirty-seventh Session of the Council, p. 172 *et seq.*; statements of the Bulgarian and Greek representatives, p. 108 *et seq.*; recommendations regarding measures to enable the League to take rapid action in cases of serious conflicts, p. 208.

31. Cf. Conwell-Evans, cited p. 51.

29. Cf. Conwell-Evans, cited, p. 37 *et seq.*

DISCUSSION OF PREVENTIVE MEASURES

To what extent the successful application of Article XI in the Greco-Bulgarian case was responsible for the increasing emphasis which began to be placed on this article of the Covenant during the succeeding years is open to question. There were, of course, many other factors which contributed to the change—notably the failure of previous attempts to strengthen sanctions and the subsequent stalemate in the work of the Preparatory Commission for the Disarmament Conference mentioned above, the signing of the Locarno treaties, and the admission of Germany to the League. But the effectiveness of the steps taken to check hostilities between Greece and Bulgaria brought out in bold relief the potential value of this method of procedure.

THE DE BROUCKERE REPORT

The first report emphasizing the significance of Article XI, however, was one submitted by M. de Brouckère of Belgium to the Committee of the Council³² dealing primarily with the question of sanctions.

In particular, it considered the situation created by the non-acceptance of the 1921 amendments to Article XVI and the consequent status of the 1921 "interpretative resolutions" of Article XVI.³³ M. de Brouckère reviewed in an illuminating fashion the origin of these resolutions and the previous work of various League committees to formulate measures for the imposition of an economic blockade. But the most interesting suggestions of the memorandum, and those which have most affected the subsequent work of the League, deal with the relation

between Articles XVI and XI and the conditions under which sanctions should be applied. M. de Brouckère pointed out that "although Article XVI applies only when a Member of the League resorts to war. . . we cannot conclude that the League must remain inactive until the crime is committed."

The question of submission of a dispute to the Council was treated by M. de Brouckère in much this same spirit. He repeated emphatically that it is the duty of the League to "take action" not only before a member resorts to war but as soon as there is an "imminent danger that an act of war may take place. . . . First of all," said he, "there must be a meeting of the Council." As to who shall request that the Council be summoned, M. de Brouckère repeated the provisions of Article XI and then asked: "Need we contemplate such a case as that no member would take the necessary initiative, all refraining by common consent from discharging their obvious duty, and the victim itself not calling for assistance?" He made categorical answer: "Such a contingency is inconceivable except on the assumption that the League had already lost all its prestige, and indeed, morally, its very existence. And, after all, it is only for a live institution that rules of action need be laid down."³⁴

Nevertheless, after the publication of Mr. H. Wickham Steed's suggestion that the Dutch or Scandinavian governments be prepared to submit the Franco-Italian dispute to the Council under Article XI, the *New York Times* correspondent in Geneva cabled that "the general tendency here is to be skeptical of anything coming from. . . the suggestion that neutrals. . . study the growing tension of France and Italy with the view, if they find a threat to peace, to exercise their right under Article XI of the Covenant of the League of Nations, to force the League to intervene."³⁵

The Committee of the Council examined M. de Brouckère's report at a meeting from December 1 to 4, 1927, and it was then considered by the Council itself. In view of the further exploration of Article XI which the

32. ~~The Council itself constituted as a committee.~~ The Preparatory Commission, in its report of May 26, 1926, had referred to the Council proposals made by the French, Finnish and Polish governments having as their aim: "to investigate the methods and regulations which would facilitate the meeting of the Council in case of war or threat of war, and which would enable the Council to take as expeditiously as possible such decisions as may be necessary to enforce the obligations of the Covenant; to investigate the procedure which would allow the rapid drafting of recommendations regarding the military assistance provided for in Article XVI of the Covenant, as well as measures which should be taken in the event of a conflict in order to prevent the development of hostilities; and finally, to study the measures which would enable the Council to give most rapidly to an attacked State such economic and financial help as might be necessary, as well as to determine the composition and procedure of any committees which the League might use to assist it for this purpose." The Council accordingly referred these questions to the Committee of the Council, to which M. de Brouckère made his report (League of Nations, *Official Journal*, 7th Year, No. 10, October 1926, Minutes of the Forty-first Session of the Council, p. 1356-1357).

33. Cf. p. 218.

34. Cf. League of Nations, A.14.1927.V., p. 68.

35. *New York Times*, July 2, 1930.

Committee of the Council had decided upon, the Council merely noted the work that had been done.³⁶

The de Brouckère report pointed out that under the Covenant it is the duty of the League to take action before a member resorts to war, in fact "before there is any ground for the application of Article XVI . . . as soon as there is any risk of its becoming necessary." The memorandum declared that the Council would be in session and would have been already called upon to take "any action that may be deemed wise to safeguard the peace of nations." Thus the memorandum stressed the importance of the Council's function to *prevent war* and stated emphatically:

"It cannot be repeated too often that it is not to place on record a breach of the Covenant that the Council should be convened in the ordinary course of things, but to prevent it. It was in Article XI that, with great wisdom, the authors of the Covenant prescribed the convening of the Council and not in Article XVI."

On the whole, the memorandum implied that the 1921 interpretative resolutions to Article XVI lose much of their importance when it is recalled that it is the primary mission of the Council to prevent war and effect the "cease fire," i.e., separate the prospective combatants, rather than put the sanctions into action. M. de Brouckère stated:

"The declaration that Article XVI should take effect may, in the worst case, be the final act of the Council, but it is unthinkable, unless the League has failed in its task, that this should be its first act and that the purpose for which it is convened should be merely to accept the irremediable."

REPORT OF THE COMMITTEE OF THREE

A Committee of Three, consisting of Viscount Cecil (Great Britain), M. de Brouckère (Belgium) and M. Titulesco (Rumania), was appointed to study concrete proposals which might be made under Article XI "in the hope of finding formulas sufficiently precise to give it a real meaning from the point of view of preventive action."³⁷ This committee met in London from February 15-17,

1927³⁸ and formulated a report which was approved by the Council on March 15, 1927.³⁹

The Committee of Three made "recommendations regarding the action that may be deemed wise and effectual for the purpose of carrying into effect the provision of that article [XI]." It was careful to point out that the committee had not been asked to give an authentic interpretation of Article XI or even to draw up a complete code of procedure for its application. In fact, throughout its report, the committee emphasized that part of the value of Article XI would be lost were a rigid code of procedure laid down for its application. The ramifications of international politics are so varied and so many that it was felt to be impossible to make any rigid classification which might hamper the action of the Council or "prescribe limits to the extensive rights which the League holds in virtue of its essential duty, that of effectually safeguarding the peace of nations."

The recommendations in the report of the Committee of Three are based on the actual practice of the Council in the past, previous resolutions of the Assembly and Council and the proceedings of these bodies and of various committees formed by the League of Nations, in other words on the body of procedure which has been built up through past application of Article XI.⁴⁰

The report considers separately action by the Council in cases where there is no threat of war or where it is not acute, and cases where there is an imminent threat of war. In the first category it makes five suggestions:

(1) Meeting of the Council, in a special session if necessary, to which the contending parties would be summoned.

(2) Possible conciliatory action at the request of the Council by an organization or even a private individual.

(3) Reference of the dispute to arbitration or judicial settlement (Article XIII of the Covenant).

(4) Investigation of the facts by a special League Commission sent to the *locus in quo*.

38. League of Nations *Monthly Summary*, VII., p. 40.

39. League of Nations, *Official Journal*, 8th Year, No. 7, A.14.1927.V., p. 76; and July 1927, Minutes of the Forty-fifth Session of the Council, Annex 963, p. 832 *et seq* for text of the report.

40. Cf. table of cases in Appendix II, p. 223-4; also p. 213.

36. League of Nations, A.14.1927.V., p. 75-76.

37. League of Nations, *Official Journal*, 8th Year, No. 2, February 1927, Minutes of the Forty-third Session of the Council, p. 133-134.

(5) Request for an Advisory Opinion from the Permanent Court of International Justice or, in special circumstances, from a specially appointed Committee of Jurists.

Where there is an imminent threat of war, the following suggestions are made:

(1) Meeting of the Council "with the greatest promptitude." Although the necessity for prompt action is emphasized, the report says nothing about submission of the dispute to the Council and apparently assumes that this will have taken place already.

(2) Urgent telegraphic appeals from the Acting President of the Council to the parties to the dispute to refrain forthwith from any hostile acts.

(3) Steps to see that the *status quo ante* is not disturbed, including perhaps indication to the parties of "any movements of troops, mobilization operations and other similar measures from which it recommends them to abstain. Similar measures of an industrial, economic or financial nature may also be recommended. It should be mentioned that in certain actual cases with which it has had to deal the Council fixed a neutral zone on either side, from which the parties to the dispute were called upon to withdraw their troops.⁴¹

(4) Sending of representatives by the Council to the locality of the dispute in order to keep itself informed of the course of events. In this connection, the suggestion is made that the Secretary-General of the League prepare a panel of experts—political, economic, military, etc.—who would be available for such service. Diplomatic personages stationed in the neighborhood, who belong to States not parties to the dispute, are also suggested.⁴²

(5) "Should any of the parties to the dispute disregard the advice or recommendations of the Council, the Council will consider the measures to be taken. It may manifest its formal disapproval. It may also recommend its Members to withdraw all their diplomatic representatives accredited to the State in question, or certain categories of them. It may also recommend other measures of a more serious character."

(6) "If the State in default still persists in its hostile preparations or action, further warning measures may be taken, such as a naval demonstration. Naval demonstrations have been employed for such a purpose in the past. It is possible that air demonstrations might within reasonable limits be employed."

It should be noted with what care the report of the Committee of Three suggests actions short of war, actions which do not fall into the category of economic or military sanctions, to back up the Council's measures

looking toward peaceful settlement of a dispute. Finally, the report says that "if, in spite of all steps here recommended, a 'resort to war' takes place, it is probable that events will have made it possible to say which State is the aggressor, and in consequence it will be possible to enforce more rapidly and effectively the provisions of Article XVI."

The Eighth Assembly on September 26, 1927 adopted this report without prolonged debate, and recommended it to the Council as a valuable guide in applying Article XI.⁴³

THE RUTGERS REPORT

The study of the possibilities of Article XI was continued by M. Rutgers of the Netherlands in a memorandum designed to further the work of the committee on Arbitration and Security, and dealing with Articles X and XVI as well. In commenting on the Rutgers memorandum in the general introduction, Dr. Beneš, the chairman of the committee, stated that the previous studies of Article XI and this last one "bring out the fact that the Covenant creates a measure of security which needs to be appreciated at its full value. The articles of the Covenant are capable of being applied in such a way that, in the majority of cases, they can prevent war." This in a sense summarizes the main conclusions of the memorandum.⁴⁴

Much of M. Rutgers' memorandum re-emphasized statements made in the earlier studies of Article XI. He stressed the wide scope of the article and its elasticity, and pointed out that Council action under it is still possible even in case of war or threat of war under the so-called "gap in the Covenant" (Article XV, paragraph 7).

In a section on "How Article XI comes into Operation," the Rutgers memorandum

43. League of Nations, *Official Journal*, Special Supp. No. 54, 1927 (8th Ordinary Assembly, Plenary Meetings), p. 177. The 1927 Assembly, as has been noted, also made provision for the constitution of a Committee on Arbitration and Security, subsidiary to the Preparatory Commission for the Disarmament Conference. After the organization of the Arbitration and Security Committee in November 1927, and the appointment of three rapporteurs, the latter met in Prague in January 1928 with the chairman of the committee, Dr. Beneš, to discuss the reports to be submitted to the full committee. The subjects and the respective rapporteurs were as follows: Memorandum on Arbitration and Conciliation, submitted by M. Holsti (Finland); Memorandum on Security Questions, submitted by M. Politis (Greece); Memorandum on Articles X, XI and XVI of the Covenant, submitted by M. Rutgers (Netherlands). The texts of these memoranda and the introduction by Dr. Beneš are available in League of Nations, C.A.S.10., February 1928.

44. League of Nations, C.A.S.10., p. 5.

41. In the Greco-Bulgarian dispute in 1925. Cf. p. 213-14.

42. Such persons were actually made use of in the Greco-Bulgarian dispute.

describes the steps of reference of a dispute to the Council by a member of the League, but lays no special emphasis on this point and does not question but that it will be done. It states that if a dispute has been submitted to a special tribunal, the Council may still intervene if such tension develops between the disputants as to amount to a threat of war. The report calls attention to the fact that in the Locarno agreements, this right of the Council is explicitly recognized.⁴⁵ If, as experience has shown, it is in some instances more expedient to resort to all possible means of direct conciliation and to the good offices of third powers in the settlement of a dispute before bringing it to the Council, Article XI, the report points out, is sufficiently elastic to allow this procedure.

In discussing the application of Article XI, the Rutgers memorandum divides the subject into several sections. In cases when the threat of war is not imminent, it is suggested that the Council may take the following steps:

(1) Call the attention of the parties to their undertakings in virtue of the Covenant, and urge them to refrain from any act which might increase the tension. (This has been done several times: in the Aaland Islands dispute, the Mosul question between Turkey and Great Britain, the incursion of armed bands from Bulgaria into neighboring States, and the Italo-Greek incident at Corfu.)

(2) Send a commission to the spot (with the consent of the party to whose territories it is to proceed) to inquire into the situation.

(3) Endeavor to hasten the settlement of the question actually at issue.

(4) Mitigate the effects of a rupture if one has already taken place.

(5) Recommend measures which will furnish pledges of the peaceful intentions of the parties towards one another; withdrawal of troops from the frontier, reduction of effectives, demobilization, etc.

The latter recommendations are suggested also for the next category of action considered, in cases where there is war or threat of war. The report makes further suggestions:

(1) Localization of the conflict; in this connection it is pointed out that the Council may take the same measures against third States who

take action against either of the parties to the dispute, as against the parties.

(2) Recommendation of an armistice in order to terminate hostilities.

RELATION OF ARTICLE XI TO ARTICLES XII AND XV

Under special cases, the report speaks specifically of the applicability of Article XI when the pacific settlement procedure under Article XV has been exhausted. It lists the following eventualities:

"(a) The Council is not able to recommend a solution unanimously.

"(b) The Council is unanimous in recommending a solution, but this solution is rejected by one or both of the parties.

"(c) The Council recognizes that the dispute concerns a question which, under international law, is within the domestic jurisdiction of one of the parties."

Furthermore, the report states that the Council may always obtain information as to what the parties propose to do after the three months' cooling-off period specified in Article XII expires, after which the parties recover freedom of action and might resort to war. Article XI would, however, remain applicable. The report suggests that the Council might recommend that the parties extend the time limit and thus allow for more time to reach a peaceful settlement. The Council might also propose measures to prevent the situation from becoming more acute. Moreover, in the case of a unanimous recommendation by the Council (not counting the votes of the parties to the dispute) which is rejected by one or both of the parties, the report suggests that the Council may endeavor to induce the party or parties who have rejected this recommendation to accept other suggestions which the Council may make for a settlement.

"MEASURES OF CONSERVANCY"

Finally, the report speaks of "measures of conservancy"—measures to prevent any aggravation or extension of a dispute between States, and to impede any measures to be taken by the parties which might exercise an unfavorable reaction on the execution of the settlement to be proposed by the Council.⁴⁶

45. Article 7 of the Rhineland guarantee treaty states: "The present treaty, which is designed to ensure the maintenance of peace, and is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take whatever action may be deemed wise and effectual to safeguard the peace of the world." *Final Protocol of the Locarno Conference, 1925, with Annexes*, H. M. Stationery Office, 1925, Cmd. 2525, p. 13.

46. Cf. League of Nations, C.358.M.112.1928.IX., *Minutes of the Third Session of the Committee on Arbitration and Security*, 1928, p. 16.

The Locarno agreements are cited as containing valuable suggestions since they provide that if a question covered by these agreements is laid before the Council, the latter shall insure that suitable provisional measures are taken. The Locarno powers have undertaken to accept such measures and "to abstain from all measures likely to have a repercussion prejudicial to the execution of the decision or to the arrangements proposed by the Council, and in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute." The Rutgers report suggests that the Council, in the case of a dispute between powers not parties to the Locarno agreements, recommend that the disputants enter into similar undertakings.

DETERMINATION OF THE AGGRESSOR

In its final observations, the report comments on the determination of an aggressor State in the event of hostilities. Here, too, it is stated that the action of the Council under Article XI will doubtless have made it much easier to decide which State is the aggressor because of the effect of the publicity of the Council meetings and the publication of the official recommendations given by the Council to the parties.⁴⁷

Since M. Rutgers' report dealt not only with Article XI but also with Articles X and XVI, his general conclusions to the whole report concern these other articles as well, although they show the importance with which Article XI is regarded.

The Rutgers memorandum was discussed at some length by the Committee on Arbitration and Security at its Second Session (Feb-

ruary 20-March 7, 1928) and again at its Third Session (June 27-July 4, 1928). The discussion brought out differences of opinion which were based for the most part on the divergent philosophies of security which have been evident in all the disarmament work of the League.⁴⁸ In introducing the general discussion of the Rutgers memorandum, the chairman of the Arbitration and Security Committee, Dr. Benes, remarked that as far as Article XI was concerned, it would be easy to achieve agreement, for there were precedents for the application of Article XI. On the other hand, as regards Article XVI, Dr. Benes said that the problem was more complicated for there were no precedents. "It is far easier," said he, "to base our discussions on what has happened than on what might happen eventually."⁴⁹

The sanction school has not objected to the formulation of opinion in regard to Article XI and has not opposed the adoption of the various reports dealing with the subject. Some States have, however, urged that there be more emphasis on Article XVI as the way to preserve the peace as well as guarantee it.

The non-sanction school on the other hand, regards Article XI as the "keystone of the arch," as one delegate expressed it.⁵⁰ As a corollary, they place more emphasis on Article XI and less on Article XVI and feel that more security is to be obtained through preventing war than through punishing an aggressor. This group rather fears a hard and fast rule by which the aggressor can be defined and seeks to avoid definite commitments beforehand as to what contributions each State will make towards combined action to enforce the sanctions.

CONCLUSION

The Ninth Assembly in September 1928 considered the Rutgers memorandum in its discussion of the work of the Committee on Arbitration and Security. The Third Committee of the Assembly introduced a resolution which was then passed by the As-

sembly⁵¹ after a careful explanation by the *rapporteur*, M. Politis. The *rapporteur* stated that according to one view, the Covenant gives a considerable amount of security which must not be overlooked (the non-sanction school). According to the other view, this security cannot be considered as adequate because the guarantees it provides are indefinite in principle and uncertain in application.

47. The full text of the Rutgers report is printed in League of Nations, C.A.S.10., February 1928, and in C.165.M.50.1928.IX., *Minutes of the Second Session of the Committee on Arbitration and Security*, p. 142 et seq.

48. Cf. p. 210.

49. League of Nations, C.165.M.50.1928.IX., p. 91.

50. Dr. Riddell, Canada. Cf. League of Nations, C.165.M.50.1928.LX., p. 95.

51. League of Nations, *Official Journal*, Special Supp. No. 64, 1928 (9th Ordinary Assembly, Plenary Meetings), p. 113 et seq.

M. POLITIS SUMS UP STUDIES OF ARTICLE XI

In explaining the resolution to the Assembly, M. Politis more or less summed up the results of the studies on Article XI. In the first place, it had been necessary to emphasize the fact that the main and essential purpose of the League was to prevent war. Therefore, in comparison with Article XVI, Article XI had a special significance from several points of view: (1) Article XI would be applied by the Council in dealing with a crisis before applying Article XVI; (2) it is "undeniably better to prevent war than to stop it"; (3) the application of the procedure laid down in Article XI facilitates the application, where necessary, of Article XVI for it would enable the Council to follow the various phases of a dispute, to observe the respective attitudes of the disputants and to take into account the help they give the Council in its task of conciliation and pacification. All these factors would aid the Council to determine which is the aggressor in case of the necessity of applying Article XVI.

The Rutgers memorandum had expressed the opinion that a hard and fast definition of the terms "aggression" and "resort to war"⁵² would be very difficult and even, if possible, very dangerous, for the rigidity of such a definition might conceivably lead the Council to a premature application of the sanctions of Article XVI. M. Politis pointed out to the Ninth Assembly that although M. Rutgers himself and certain other members of the Arbitration and Security Committee had supported this view, it had not been generally accepted by the committee. Therefore the Assembly resolution merely noted these difficulties and stated that the "information concerning criteria of aggression contained in the Committee's documents usefully summarizes the studies made by the Assembly and the Council and the provisions of certain treaties."

M. Politis then stated that in regard to the preparation of military sanctions, there was a difference of opinion, since certain members of the committee felt that it was not advisable to encourage such preparation,

as it might hinder the development of mutual confidence between States. Furthermore, it was felt that such preparation should only be undertaken conjointly, and parallel with the development of pacific procedure and a general agreement regarding the limitation and reduction of armaments. On the other hand, several States felt that the preparation of military sanctions constitutes an additional security, since States which feared they might become the victim of aggression were anxious that the help promised under Article XVI be forthcoming promptly.

OTHER LEAGUE WORK IN THIS FIELD

The foregoing summary has been limited primarily to discussions which have taken place in several League committees. These more or less academic discussions, relating particularly to Article XI of the Covenant, have tended to show an increasing emphasis on prevention of war rather than on punishment of an aggressor. But the actual extent to which members of the League have stressed preventive measures can only be determined in relation to the general work of the League in the related fields of arbitration, security and disarmament. Here the trend toward measures for preventing hostilities is perhaps less obvious. Whereas the Arbitration and Security Committee has been formulating a draft of a General Convention to Strengthen the Means of Preventing War,⁵³ it has also prepared a series of model treaties providing for mutual assistance against an aggressor.⁵⁴ Other projects which have not been mentioned in this report because of the lack of space, but which are nevertheless important, include the draft treaty providing financial aid for a State victim of aggression.⁵⁵

53. This draft treaty is designed to bind States in advance to accept provisional recommendations which the Council may make. It will be discussed at the forthcoming September Assembly. Grave differences of opinion in regard to it have been apparent in the discussions of the Arbitration and Security Committee. Cf. especially League of Nations, A.11.1930.VII., Committee on Arbitration and Security, *Report of the Committee on the Work of its Fourth Session*.

54. These treaties are models which it is hoped various States will use in negotiating bilateral or multilateral mutual assistance and non-aggression treaties. Such treaties are designed to further regional security.

55. The principle underlying financial assistance is that a State member of the League which has been attacked shall be given prompt and effective financial aid in the form of loans guaranteed by the contracting States. The State so assisted undertakes to submit the dispute to peaceful settlement.

52. As used in Article X and Article XVI of the Covenant.

APPENDIX I

ARTICLE X

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled.

ARTICLE XI

1. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall, on the request of any Member of the League, forthwith summon a meeting of the Council.

2. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

ARTICLE XII¹

1. The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or *judicial settlement* or to inquiry by the Council and they agree in no case to resort to war until three months after the award by the arbitrators or the *judicial decision*, or the report by the Council.

2. In any case under this Article, the award of the arbitrators or the *judicial decision* shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

ARTICLE XIII

1. The Members of the League agree that, whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration or *judicial settlement*, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration or *judicial settlement*.

2. Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or *judicial settlement*.

3. For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article XIV, or any tribunal agreed on by the parties to the dispute or stipulated in any convention existing between them.

4. The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.

ARTICLE XIV

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

ARTICLE XV

1. If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or *judicial settlement* in accordance with Article XIII, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

2. For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

3. The Council shall endeavor to effect a settlement of the dispute, and, if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

4. If the dispute is not thus settled, the Council, either unanimously or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

5. Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

(1) The amendments in italics came into force on September 26, 1924.

6. If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

7. If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

8. If the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

9. The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

10. In any case referred to the Assembly, all the provisions of this Article and of Article XII relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

ARTICLE XVI

1. Should any Member of the League resort to war in disregard of its covenants under Articles XII, XIII, or XV, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval, or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

ARTICLE XVII

1. In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of Membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles XII to XVI, inclusive, shall be applied with such modifications as may be deemed necessary by the Council.

2. Upon such invitation being given, the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

3. If a State so invited shall refuse to accept the obligations of Membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article XVI shall be applicable as against the State taking such action.

4. If both parties to the dispute, when so invited, refuse to accept the obligations of Membership in the League for the purpose of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

APPENDIX II

**LIST OF DISPUTES SUBMITTED TO THE COUNCIL IN PURSUANCE
OF THE TERMS OF THE COVENANT***
(Disputes involving hostilities *in italics*)

<i>Subject of the Dispute</i>	<i>The Disputants</i>	<i>State effecting the submission to the Council: Articles utilized</i>	<i>Means or attempted means of Settlement</i>
(1) <i>Russian bombardment of Persian port (Enzeli), 1920</i>	Persia and Soviet Russia	Persia Articles X and XI May 19, 1920	Direct method: hostilities cease
(2) The attribution of the Aaland Islands, 1920	Finland and Sweden	Great Britain Article XI, par. 2 June 19, 1920	(1) Jurists' Commission (2) Commission of Inquiry (<i>Rapporteurs</i>)
(3) <i>Danger of War between Poland and Lithuania, 1920</i>	Poland and Lithuania	Poland Article XI Sept. 5, 1920	Peace Commission: hostilities cease
(4) <i>Frontier between Panama and Costa Rica, 1921</i>	Panama and Costa Rica	Panama Mar. 3, 1921	Direct method: hostilities cease
(5) <i>The Albanian frontier: invasion by Serbians</i>	Albania and Yugoslavia	(1) Albania Article XI June 15, 1921 (2) Great Britain Article XI Nov. 7, 1921	(1) Peace Commission and Inquiry (2) Direct method: hostilities cease: troops retire
(6) The Partition of Upper Silesia, 1921		The Supreme Council of the Allies Article XI, par. 2 Aug. 3, 1921	Direct method (Committee of the Council)
(7) Eastern Carelia: alleged violation of autonomy by Russia	Finland and Russia	Finland supported by Latvia, Esthonia, Poland and Lithuania Article XI, par. 2 Article XVII Jan. 13, 1922	Advisory opinion
(8) Delimitation of frontier between Austria and Hungary, 1922	Austria and Hungary	Conference of Ambassadors ask the Council to give a binding award June 2, 1922	Direct method
(9) Alleged Bulgarian comitadji activities on neighboring frontiers, 1922	Rumania, Yugoslavia, Greece, and Bulgaria	Bulgaria Article XI, par. 2 June 17, 1922	Direct method
(10) Tunis nationality decrees	France and Great Britain	Great Britain Article XV, par. 1 Aug. 2, 1922	Advisory opinion
(11) The property of the Hungarian optants	Hungary and Rumania	Hungary Article XI, par. 2 March 15, 1923	Direct method
(12) Frontier between Poland and Czechoslovakia (Jaworzina)	Poland and Czechoslovakia	Conference of Ambassadors Article XI, par. 2 Aug. 18, 1923	Advisory opinion
(13) <i>The murder of Italian General Tellini followed by Corfu bombardment</i>	Greece and Italy	Greece Articles XII and XV Sept. 1, 1923	Direct method
(14) The administration of Memel	Allied Powers and Lithuania	Conference of Ambassadors Article XI Sept. 25, 1923	Commission of Inquiry
(15) <i>Frontier between Turkey and Iraq</i>	Great Britain and Turkey	Great Britain: (1) Treaty of Lausanne, July 6, 1924 (2) Article XI, par. 2, Covenant Oct. 27, 1924	(1) Commission of Inquiry (2) Advisory opinion (3) Peace Commission
(16) Monastery of Saint Naoum	Albania and Yugoslavia	Conference of Ambassadors, June 5, 1924, "in accordance with precedent," no specific reference to Article XI	Advisory Opinion

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<i>Subject of the Dispute</i>	<i>The Disputants</i>	<i>State effecting the submission to the Council; Articles utilized</i>	<i>Means or attempted means of Settlement</i>
(17) ^a Greco-Turkish exchange of nationals	Greece and Turkey	Greece Article XI Oct. 1924	Advisory Opinion
(17) ^b Expulsion of the Oecumenical Patriarch	Greece and Turkey	Greece Article XI, par. 2 Feb. 2, 1925	Private negotiations
(18) <i>Invasion of Bulgaria by Greek troops</i>	Greece and Bulgaria	Bulgaria Articles X and XI Oct. 22, 1925	(1) Direct intervention: hostilities cease (2) Commission of Inquiry (to determine guilt)
(19) Frontier between Greece and Turkey (Maritza)	Greece and Turkey	Greece Articles XI and XIV Nov. 24, 1926	Direct method (committee of jurists)
(20) Anglo-Italian agreement affecting the waters of Ethiopia	Ethiopia, Great Britain, Italy	Ethiopia Article X (Correspondence with Secretary-General) June 19, 1926	
(21) Closed frontier between Poland and Lithuania: alleged danger of attack by Poland	Poland and Lithuania	Lithuania Article XI Oct. 15, 1927	Military Commission (attachés)
(22) The property of the Hungarian optants: reopening of question	Hungary and Rumania	Rumania Article XI, par. 2 Mar. 1927	Direct method
(23) Albanian minorities in Greece	Albania and Greece	Albania Article XI June 1928	Direct method
(24) <i>Frontier between Bolivia and Paraguay, 1928</i>	Bolivia and Paraguay	Council of the League (In virtue of Article IV, par. 4, though not specified) Dec. 1928	Direct intervention: hostilities cease